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EXTRAORDINARY

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No. 205] NEW DELHI, THURSDAY, AUGUST 6, 1953

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ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi, the 23rd July 1953*

**S.R.O. 1517.**—Whereas the election of Shri Bhairon Lal (alias Kalabadal), as a member of the Legislative Assembly of the State of Rajasthan, from the Khanpur constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Jujhar Singh, son of Shri Sangram Singh, Rajput, resident of Kundanpur House, Kotah;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, KOTAH

CORAM:

Shri P. D. Pande,—*Chairman.*  
Shri J. P. Mathur,—*Member.*  
Shri Bishan S. Darbari,—*Member.*

ELECTION PETITION No. 273 OF 1952

Shri Jujhar Singh, s/o Sangram Singh, Rajput, resident of Kundanpur House, Kotah,—*Petitioner.*

*Versus*

1. Shri Bhairon Lal (*alias* Kalabadal), Member Rajasthan Legislative Assembly, C/o Provincial Congress Committee, Jaipur and Modak, Kotah;
2. Shri Sampat Raj, Kotah Division, Bakani-Jhalawar;
3. Shri Ram Prasad, Dhan Mandi, Kotah;
4. Shri Satya Pal Tyagi, House No. 18, Ward No. 10, Kotah,—*Respondents.*

COUNSEL:

Shri Purshottam Das Mantri and Shri Mahavir Prasad Sharma, for the Petitioner and Shri Nathu Lal Jain, Pt. Ram Sharan, Shri Pana Chand Jain, Shri Vedpal Tyagi and Shri Dwarka Prasad Purohit for Respondent No. 1.

## JUDGMENT

This election petition complains of the alleged undue return of Respondent Bhairon Lal, *alias* Kalabadal, to the Rajasthan Legislative Assembly from Khanpur Constituency at the last general elections of 1952 and claims the seat for the petitioner after scrutiny and recount.

It appears that the parties were candidates at the said election. The Petitioner was a Ram Rajiya Parishad candidate, while, Respdt. Bhairon Lal fought on the Congress ticket. The first polled 4868 votes against the latter who got 4870 and was, therefore, declared elected by a majority of only 2 votes.

The Petitioner prays that the election of Shri Bhairon Lal be declared to be void and the Petitioner be declared duly elected after general scrutiny and recount.

The reasons for the above reliefs as given by the Petitioner are two-fold.

Firstly, it is alleged that Respondent Shri Bhairon Lal himself and through his agents:—

(A) Committed the corrupt practices of undue influence by—

- (i) getting a general order issued by the Assistant Customs Commissio of Jhalawar District directing all the employees of his Departm in Khanpur Constituency to help the Congress candidate, promising them a reward if they did so and threatening them with punishment, if they acted otherwise, with the result, that all the employees of the Customs Department threatened the public to vote for the Congress candidate *viz.*, Respdt. Shri Bhairon Lal.
- (ii) procuring and abetting and attempting to procure persons to personate at the election at several polling stations, for instance, according to the petitioner, Kishna S/o Bheria presented Kalia S/o Kamadji at Bhagher, and voted for Respondent, and Sujan personated Khinwas of Bhurelal Khinwan at Umeria, while at Bakani, Bhurelal of village Rupla was given a tendered ballot paper and cast his vote as a tendered vote. It is alleged that the votes of these persons were improperly accepted.

(B) Published false statements against the Ram Rajiya Parishad whose candidate the petitioner was and issued a poster showing that Jagirdars commit atrocities on the cultivators, and,

(C) Took the assistance of a number of Government servants *viz.*, Asstt. Commissioner of Customs and the employees of the Customs Department at Jhalawar to further his prospects of election.

Secondly, the petitioner pleads that the result of the election has been materially affected:—

(I) By the improper reception of the votes of—

- (i) one Perra, who at polling station Jolpa was given out two ballot-papers and voted for Respdt. Shri Bhairon Lal;
  - (ii) Kishna, who personated Kalia, at Polling Station Bhagher;
  - (iii) somebody, who at polling station Bakani had already voted for Bherulal, whose vote was accordingly rejected as a tendered vote;
  - (iv) Sujan who personated Khinwan or Bhurelal Khinwan at polling station Umeria;
  - (v) Goru S/o Bhera
  - (vi) Gopal S/o Panna, and,
  - (vii) Kana S/o Nanda
- } who according to petitioner are all minors  
but were allowed to vote for Respondent  
Shri Bhairon Lal.

(II) By the improper rejection of some of the votes at the following Pollir stations:—

- (1) At Padlia, where one Kanwarlal's vote for the petitioner was rejected, because, he had put his voting paper half-inserted in the Petitioner's ballot box as the slit of the box was blocked and the Presiding Officer failed to remove the defect in the ballot-box in spite of being called upon by the voter to do so,

- (2) At Koshalpura, where also the ballot-box was blocked and two ballot-papers which were found three-fourths inserted in the Petitioner's ballot-box were again rejected.
- (3) At Beragarh, where the symbol of the Petitioner's ballot-box had dropped down and the slit of the ballot-box had also got blocked, and so, 40 ballot-papers which were placed by the voters on the petitioner's symbol were rejected.
- (4) At Rejhon, where also, the symbol of the petitioner was found missing from the ballot-box.

Respds. 2 to 4 remained absent, but, although, Respd. No. 1 admitted that he had won the election against the Petitioner by merely two votes he has contested the petition on various grounds. On the basis of his recrimination and written statement and objection to them as made by the Petitioner, the following preliminary issue was framed:—

"Is Respondent No. 1 debarred from raising recrimination without having complied with the provisions of Section 97 of the Representation of People Act 1951?"

We decided the above issue on 6th January 1953 and held, although, Respd. 1 was not technically debarred from making a recriminatory charge, we were not prepared to take any action on the recrimination (*vide*, our order at pp. 38 and 38A).

In his written statement in addition to the grounds of recrimination with which we are no longer concerned, Respd. No. 1 denies that he has had anything to do with the issue of any order by the Assistant Customs Commissioner. According to him, Kishna, S/o Bheria who had personated at Bagher polling station was actually brought by the agents of the petitioner to cast his vote, and on inquiry, it was found that he (Kishna) had voted for the Petitioner. The Respd. pleads ignorance about the incidents which the petitioner says had taken place at Bakani and Umeria polling stations. He says, he never issued any poster which was against facts and never obtained the assistance of any Government servants. According to him, there is no voter by the name of Peera in Jolpa polling station, and also no voter, who had cast two ballot-papers in the ballot-box. He asserts that Perra, Kishna, Bherulal and Sujan did not vote for him and that Goru, Gopal and Kana were all majors according to the electoral roll which could not be questioned by the petitioner at this stage. He denies all the allegations of the petitioner as regards the incidents said to have taken place at polling stations, Padlia, Koshalpura and Bera Garh. According to him, at the last place, the petitioner's symbol was found to have fallen down at 3-30 p.m. and after that no ballot papers were dropped into the ballot-boxes. He says that none of the votes having been improperly received or rejected, the petitioner is not entitled to any scrutiny and recount and that the petition not having been verified in accordance with law, is liable to be dismissed.

On the above pleadings of the parties the issues as originally framed on 6th January 1953 and subsequently amended and added to on 29th June 1953, stand as follows:—

1. Has the petition not been verified according to law and is it liable to be dismissed on that account?
2. Were Respd. No. 1 himself and his agents guilty of the various corrupt practices as detailed in para. 5 of the petitioner read with Schedule II thereof?
3. Did Respd. No. 1 himself and his agents publish any false statements as detailed in Schedule III of the Petition, by issuing posters against the Ram Rajiya Parishad or Jagirdars, and if so, with what effect on the Petitioner's candidature?
4. Did Respd. No. 1 himself and his agents take the assistance of a number of Government servants mentioned in Schedule 4 of the Election Petition to further the prospects of his election?
5. Is the Petitioner competent to question, before this Tribunal the ages of Goru, Gopal and Kana as entered in the Electoral Roll?
6. Has the result of the election been materially affected by the Presiding Officer's non-compliance with the provisions of the Representation of the People Act 1951 and Rules as alleged by the Petitioner in clauses (a) to (e) of para. 8 of his petition?
7. Is the Petitioner entitled to a general scrutiny or recount?

8. Have any of the votes been improperly accepted or rejected in favour of respondent No. 1 and has the result of the election been materially affected by the improper reception or rejection of such votes?
9. To what reliefs, if any, is the petitioner entitled?

#### FINDINGS

*Issue 1.*—This issue has not been pressed before us, nor do we see any defect in the verification of the petition, because, the contents of both the petition and the four Schedules attached to it have been verified at the foot by the petitioner himself as correct to his knowledge and the verification has not only been signed by the petitioner, but also, mentions the date on which and the place at which it was signed. This means that the provisions of Order VI, Rule 15 of the Civil Procedure Code have been duly and fully complied with. The issue is accordingly decided against Respdt. No. 1.

*Issue 2.*—The various corrupt practices alleged against Respdt. 1 and detailed in para. 5 of the petition read with Schedule II thereof, have been summarized by us as points A(i), A(ii), B, C and I (ii) to I(iv), at pages 1 and 2 of the introduction to this judgment. It will, therefore, be convenient to discuss the said points with reference to the aforesaid numbers.

*Point A (i).*—A copy of the alleged general order of the Assistant Commissioner of Jhalawar purporting to ask his subordinates to help the Congress candidate is at p. 75 and on the express request of the petitioner as contained in his application at p. 115 and the original order at p. 138 was sent for, but, for reasons best known to himself, the petitioner has failed to prove the document. We cannot, therefore, look into the said general order, and so, no question of attaching any responsibility to Respdt. No. 1 in connection with that order arises.

*Point A (ii).*—This point is connected with points I(ii) to I(iv). As regards point I(ii) our scrutiny reveals that Kishna, who personated Kalia had voted at polling station Bagher, not for Respdt. No. 1 but for the Petitioner himself. In respect of point I(iii), the petitioner has no evidence to fasten any responsibility on Respdt. 1 for the alleged tendered vote of Bhure Lal at polling station Bakani, and so far as, point I(iii) is concerned, instead of proving that Sujana had personated Khinwan, or, Bhurelal Khinwan, at polling station Umeria, petitioner's own witness Shri Durgalal (P.W. 13) has deposed that it was, in fact, Khuman, who had at that polling station personated as Sujana. Thus, the tables stand completely turned against the petitioner, so far as, points A(ii) and I(ii) to I(iv) are concerned.

*Points B and C.*—These points form the subject matter of issues 3 and 4 respectively and will, therefore, be presently discussed under those issues.

The net result of our finding on this issue (*i.e.* issue No. 2) is that the petitioner has failed to prove any corrupt practice against Respdt. No. 1 in regard to points A(i), A(ii) and I(ii) to I(iv).

*Issue 3.*—This issue covers Petitioner's point B, at page 2, of this judgment. The Petitioner has failed to prove that the Respdt. No. 1 and his agents published any false statement against the Ram Rajiya Parishad, but, he has brought on the record one poster, Ex. 23, which has been proved to have been distributed both against the Rajputs and Jagirdars (*Vide* P.W. 1). The Petitioner has not, however, been able to establish that the document contains any statement of fact which is false and which Respdt. No. 1 either believed to be false or did not believe to be true. Nor, does the document relate to the personal character or conduct of the Petitioner, and so, we cannot condemn it under Section 123(5) of the R. P. Act of 1951.

But, we think that, although, the petitioner has made no allegation to that effect, we are yet entitled to see as to whether or not the poster falls within the mischief of undue-influence. The entire evidence of the Petitioner indicates that he has felt the sting (of the Poster) most keenly, but, the fact remains that he has misdescribed the poison. There is, therefore, no reason why we should disregard the venom and refuse to analyse it. As a matter of fact, a point of law need not be specifically pleaded and we are here to take notice of it.

The definition of undue-influence is very wide under the R. P. Act of 1951. It includes four different forms of interference *viz.*, direct interference (2) indirect interference (3) direct attempt to interfere, and, (4) indirect attempt to interfere. In our opinion, the offence of Respdt. No. 1 in relation to Ex. 23 falls within the last category of an indirect attempt to interfere.

It may be observed that it is not necessary that an attempt to interfere be by the method of compulsion alone and that even the method of inducement may be sufficient, provided it be of such a powerful type as would leave no free will to the voter in the exercise of his choice. In other words, actual physical compulsion is not necessary, but, positive mental compulsion may be enough to give rise to an undue-influence. For the reasons which we shall presently give, we read this sort of mental compulsion in the poster and, therefore, hold that it falls within the purview of undue-influence.

Now with regard to the poster Ex. 23, the following three pertinent questions arise:—

- (a) Whether Respdt. No. 1 can be held to be responsible for making use of the Poster for purposes of his election?
- (b) Whether or not the Poster amounted to an attempt to indirectly interfere with the free exercise of an electoral right, and
- (c) What is the effect of the Poster on Petitioner's candidature?

The first question (a) which requires to be discussed is as to whether or not Respdt. No. 1 had made use of the poster Ex. 23, in order to further his election prospects. Both the Respondent (R.W. 14) and his election agent Prabhul Lal Centre (R.W. 6) have stated on oath that they have seen the Poster for the first time in this Court. But, in our opinion, this statement is nothing short of a bold-faced lie. We have come to this conclusion in spite of the additional evidence of Respdt., seven witnesses *viz.* R.Ws. 7 to 13, because, that evidence is nothing but negative in its nature.

The positive evidence which has led us to believe that the poster was actually made use of or rather abused for purposes of election by Respdt. 1, may be summarized as follows:—

Respdt. No. 1 was admittedly a Congress Candidate. According to a printed footnote at its bottom, the Poster was approved by the Publicity Department of the Rajasthan Pradesh Congress Committee. It cannot be denied that the latter committee was directly or indirectly interested in the candidature of Respdt. 1, who had stood on the Congress ticket, and so, if that committee had seen it fit to approve of the very deplorable poster, the probabilities are that the poster was certainly used.

But, the petitioner's case does not rest on probabilities alone. He has examined himself on oath and has stated that he had personally seen Respdt. No. 1's agents pasting over the copies in presence of Respdt. No. 1 himself, on the walls in Khanpur and Asnawar. He has added that a copy of the poster used to be displayed on Respdt. No. 1's car and that with reference to the poster, Respdt. No. 1 and his agents Prabhulal and Bhairon Lal used to deliver speeches to the effect that the Jagirdars and Rajputs would, if elected, treat the peasants in the manner indicated in the poster. The petitioner is undoubtedly a party but we believe him, because, he is, something more and something better. He holds a Master's Degree in Political Science and is also a Law Graduate. Besides this, he is an A.D.C. to His Highness the Upraj Pramukh of Rajasthan. He accordingly seems to be much more reliable than Respdt. No. 1, who on his own admissions, is a mere cultivator. The next witness who had deposed about the poster is Badruddin (P.W. 6), who has stated that he had seen posters like Ex. 23 pasted over the walls at 10 or 15 places in his village Dhaikhhera and especially at the houses of Bashir Mohamad and Khwaj Mohamad. He says that the posters were kept at the shops of Madan and Jagdish and the latter used to ask the passers-by to paste them on the walls. It may be noted that this Jagdish was the polling agent for Respdt. 1. Budruddin has further told us that Prabhulal Centre used to distribute posters like Ex. 23. The third witness about the posters is Latur (P.W. 7). He had seen a copy of the poster pasted at the temple and another copy at the Patwari's residence. The fourth witness Ram Nath (P.W. 8), swears that the Respdt. No. 1 had shown him a poster like Ex. 23 and had also told him that the Jagirdars would give trouble in the manner depicted in the poster. The fifth witness is the petitioner's own brother Shri Bahadur Singh (P.W. 11), who had also acted as his polling agent in Khanpur Tehsil. He says that the Respdt. 1 had brought with him a large number of the copies of Ex. 23 and he and his agents namely, Prabhulal Centre, Madan Lal, Vithal and Dhanalal either got these copies plastered or pasted them themselves at various public places and on the walls of the big houses in the villages in Khanpur. He adds that he saw posters like Ex. 23 at Sumar, Rahikhera, Mundla and Panawa also and that with reference to the poster Respdt. No. 1 used to say that the petitioner was a Jagirdar and would commit atrocities similar to those revealed by the poster.

There is little reason to treat the above evidence as unreliable because, if the poster was actually printed with the approval of the Rajasthan Pradesh Congress Committee, it was certainly not printed to be concealed or shelved but to be widely circulated and brought to use by the Congress for election purposes as has been deposed to by P.Ws. 1, 6, 7, 8 and 11 on behalf of the Petitioner. It may be noted that even Respd. No. 1's own witness Anandilal (R.W. 16) admits that he had seen the poster somewhere. This means that he could not have possibly seen the poster unless it had been given some publicity.

In regard to question (b), one has only to study the poster Ex. 23 in order to understand its mischief and hideousness. The slogan of the poster is:—

"Jagirdaron ka atyacharon ko khatam karne ke liye, Congress ko vote do"  
(Vote for the Congress in order to put an end to the atrocities of the Jagirdars).

On the left-hand side, a person—apparently a tenant,—is shown tied up to a tree with a rope. On the right, there is the well-dressed Jagirdar asking his man, who is seen waving a whip, to flog the tenant. Evidently, the tenant's wife, who has apparently, attempted to intervene, has been thrown down prostrate on the ground. To the right hand side of the picture, there is the symbol of 'two bullocks with yoke on', and near about the slit there are the hands of so many voters—males and females, attempting to cast their votes in the ballot box.

It may be recalled that the Ram Rajiya Parishad had mostly give out their tickets to Rajput candidates in Kotah Division and that the Petitioner, who was a Ram Rajiya Parishad candidate, is a Rajput and his own elder brother Ap Takhat Mal ji or Takhat Singhji is a Jagirdar. The poster was, therefore, clearly designed not only to catch voters for Respd. 1, but also, to overawe voters, the majority of whom were men of no better intelligence than ordinary illiterate villagers and to create a feeling of positive prejudice, if not of terror as well, in their minds against the Petitioner. The fact that the poster was printed and published by the Publicity Department of the Rajasthan Pradesh Congress Committee does not mitigate Respd. No. 1's offence, for the law is that a society publishing posters and putting up a candidate becomes his agent (*vide* Amritsar South 1 E.C.D. Vol. I, p. 92). In our opinion, there was a clear community of purpose between the publishers and Respd. No. 1 in regard to the circulation of Poster. We accordingly hold that the demonstration or distribution of the Poster was an attempt at indirect interference with the free exercise of an electoral right of the voters and therefore amounted to a corrupt practice under Section 123(2) of the R. P. Act of 1951.

The last question (c) relates to the effect, if any, of the poster on the petitioner's candidature. In our opinion, the effect is not for to seek and was very material. The Petitioner was well within two votes of Respd. 1, and so, it is not difficult to believe that, but for the poster, he would have certainly defeated the Respd. No. 1, by a number of votes amongst whom at least Latur's (P.W. 7's) would probably have been one. In fact, in case of an "attempt to interfere" it is not necessary to allege or prove specifically that any person was actually unduly influenced.

**Issue 4.**—This issue refers to Petitioner's point C at p. 2 of this judgment. We have already held under issue 2 that the Petitioner has failed to establish point A(ii) to the effect that the Assistant Customs Commissioner had issued any general order in regard to voting in favour of the Congress.

But, although, the order itself has not been proved, yet, in anticipation of the proof of that order which, ultimately remained unproved, a volume of evidence was led for the Petitioner to suggest that some sinister propaganda was really afoot on behalf of Respd. No. 1 to canvass votes for himself under the shelter of some order of the Customs department. We have it Bhanwarlal (P.W. 3) that about 6 or 7 days before the election, Prabhulal (R.W. 6) and Anandilal Jagati were standing at the Hatwara (market-place) along with many other persons *viz.*, Bhanwarlal Momin, Bhanwarilal Dhobi, Badruddin Momin and others and were saying that they had received orders from the Customs Officer Jhalawar, the people should vote for the Congress and that those who did not would be punished. Badruddin aforesaid has been examined as P.W. 6 and has corroborated the statement of Bhanwarlal (P.W. 3). The other two witnesses, who have attempted to support Bhanwarlal are Bhairon Singh (P.W. 9) Udhav (P.W. 1) and Shri Bahadur Singh (P.W. 11). But, all this evidence does not deserve any consideration, because, it is secondary evidence in respect of an order which is on the file and should have been, but has not been, proved. We accordingly decide the issue in the negative.

**Issue 5.**—This issue relates to points I(v) to I(vi) at p. 2 of this judgment. The Petitioner's contention is that in spite of the fact that three of the voters viz., Goru, Gopal and Kana were minors at the time of the voting they were allowed to cast their votes. Respd't. No. 1 has tried to repel this contention by stating that all these persons whose names were entered in the electoral roll, were majors, and the roll being final, cannot be questioned by the petitioner at this stage.

Respd't.'s objection does not appear to be sound. The present election law on the point of minority is quite clear. Article 326 of the Indian Constitution lays down that only a person who is a citizen of India and is not less than 21 years of age on such date as may be fixed in that behalf, shall be entitled to be registered as a voter and the same proposition has been repeated in Section 19(b) of the R. P. Act of 1950. The date fixed in view of Article 326 was the 1st day of March 1950. Therefore, we have to see whether or not Goru, Gopal and Kana were actually minors on the aforesaid date. All the three of them have been produced before us as P.Ws. 12 and 5, the first and third on 7th February 1953 and the second on 13th April 1953. In regard to the first and third our opinion as recorded in the memoranda of their evidence is that they were certainly below 21 years of age on the date of their examination i.e., on 7th February 1953. From this it follows that they were much more so on 1st March 1950. In Ex. 13, the Presiding Officer also thought that Kana was only 18 years old on the date of the voting. Gopal (P.W. 12) however, gave his age as 23 years on 13th April 1953. This makes it doubtful whether he had actually become 21 on 1st March 1950. In these circumstances, our conclusion is that Goru and Kana were minors on the date of the election.

Now the question is: whether or not the Petitioner is competent to raise the point of Goru and Kana's minority at this stage?

There is no doubt that so far as the Presiding and Returning Officer are concerned, the authority of the Electoral Roll is conclusive. In the North Bhagalpur case (I.E.P. 53), the Commissioners have also held that they were "precluded from inquiring into the question of a candidate or elector's possession of necessary qualification as a voter". Similar view was held in *Barabanki cum Fyzabad General Case*, I.E.C.D. Vol. II p. 34 and *Saharanpur District Case*, I.E.C.D. Vol. I p. 96. But, in our opinion, with regard to any statutory disability like minority, however, the case should be different as it is different in England *vide*, Rogers on Parliamentary Election Vol. II p. 28, and the votes of persons who are under a personal disqualification as minors should be struck off, although their names are on the electoral roll. We are supported in this opinion by the Punjab South East Case D.E.C. (case No. 146). We accordingly hold that the petitioner is competent to question before this Tribunal the ages of the two voters Goru and Kana who have been proved to be minors.

**Issue 6.**—This issue takes us back to petitioner's points I(i) to II(4) at pp. 2 and 3 of this judgment. The Petitioner has failed to satisfy us that Kanwarial's vote at Padlia, which was found half-inserted in the ballot box, two ballot-papers at Koshalpur, which were found three-fourths inserted and 40 ballot papers at Bera Garh, which were found placed on the Petitioner's symbol, were improperly rejected. Rule 25 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, clearly enjoins that the voters shall put their ballot-papers through the slit provided for the purpose into the ballot box. Therefore, if the voters in question had failed to put their ballot-papers into the Petitioner's ballot box, it was but just and proper that those votes be rejected.

As regards the other complaint that the symbols of the Petitioner had fallen down from his ballot-boxes at Bera Garh, and Rejhon, this was probably a possibility which could not be helped, because, paper labels pasted over to a metallic surface like that of a ballot-box have, oftener than not, a natural tendency to drop down when dry. We trust that some better methods of pasting or displaying the symbols on the ballot boxes will be devised in the future. But, so far as the present case is concerned, Shri Kalicharan who could have been the proper witness as regards the loss of the symbol and the closing down of the slit at Bera Garh, has not been produced and Ex. X indicates that after the Presiding Officer, Shri Durga Lal, (P.W. 13) found the symbol of the Petitioner's ballot-box dropped down, there was probably no voting effected.

For the reasons given above, we hold that the petitioner having failed to prove that there was any non-compliance with the Rules at Polling Station Padlia, Koshalpur, Bera Garh and that any of the votes were improperly rejected, the

result of the election has not been materially affected on account of non-compliance with any of the Rules.

*Issue 7.*—In view of the Petitioner's allegations in Para. 7 of petition and Respondent No. 1's denial thereof, as also, on the basis of the positive evidence led by the Petitioner that at least two of the voters *viz.*, Goru and Kana, who had actually cast their votes, were minors on the date of the election, it became necessary for us to order a scrutiny which was made on 30th June 1953, and the result thereof, is noted down at pages 385 and 386 of the record. We accordingly hold that the Petitioner was entitled to the scrutiny.

We may, however, note that the petitioner has not been able to make out any case for a Recount. If, however, the scrutiny will entail any readjustment of votes, we shall make it.

*Issue 8.*—The question of the alleged improper rejection of the votes has just been partly dealt with by us under issue 7 and, therefore, in the light of our decision on that issue as also on issue 5, the only points left for our consideration under the first portion of this issue are:—

(a) Point I(i) as mentioned at page 2 of this judgment.

(b) Acceptance, if any, of the two votes of Abdullah and one vote each of Goru, Kana and Kishna.

As regards point (a), the Petitioner has failed to substantiate his allegation as made in para. 7(i) of his election petition that one person named Peera had been given two ballot papers and had cast both of his votes in favour of Respdt. No. 1. We accordingly hold that Peera, aforesaid, had not voted at all for Respdt. No. 1.

In regard to point (b) we deem it convenient to discuss the case of each of the four persons named above, separately and as follows:—

*Abdullah s/o Ramzan*—we have it from Sri Ram Gopal (P.W. 2) who had acted as the Polling Officer at Jolpa that two ballot-papers Nos. 134703 and 134704 had been issued, through an oversight, to one Abdullah s/o Ramzan entered at Serial No. 10 in the Electoral Roll Ex. 19 and that the Presiding Officer Mr. Jaswant Rao had accordingly reported that ballot-paper No. 134704 may be cancelled. Our scrutiny, however, indicates that both the aforesaid papers were used and counted in favour of Respdt. No. 1. Therefore, in keeping with the provisions of Rule 47(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951, we order that one of the two votes shall be deducted from the total number of votes obtained by Respdt. No. 1.

*Goru s/o Bhaionj*—This voter was given ballot-paper No. 124,302, at polling station Gadarwada Noorji (*vide* Exs. 36 and 39). Our scrutiny shows that he also voted for Respdt. No. 1. We have found it under issue 3 that he was a minor at the time of the voting. His vote also has, therefore to be taken out from Respdt. No. 1's total score.

*Kishna s/o Bherla*—He was given ballot paper No. 125, 305 (*Vide* P.W. 16 and Ex. 38) at polling station Bagher and there has been great deal of mud-throwing between the contesting parties as regards this voter. Either side tried to show that this man had personated in favour of the other side. But, all this controversy ended at our scrutiny at which it was found that he had voted for the Petitioner himself. The petitioner accordingly stands hoisted with his own petard and must lose this vote.

The Petitioner having failed to make out any case for the improper rejection of any of the votes, the next question to be determined under this issue is to whether the result of the election has been materially affected by the improper reception of the votes of Abdullah, Goru and Kishna. We hold that, although, the result has been slightly affected, it cannot be said to have been materially affected on that account, because, on taking out one vote of Abdullah and another of Goru, from the 4870 votes obtained by Respondent No. 1, his score would stand at 4868, while, on deducting Kishna's one vote from Petitioner's 4868 votes, he will be deemed to have secured only 4867 votes *i.e.*, one vote less than Respdt. No. 1.



*Issue 9.*—In view of our decision on issue 3 and in pursuance of the provisions of Section 100(2)(b) of the R. P. Act 1951, the election of Respondent No. 1 shall be declared to be void and he shall also stand disqualified under Section 140 of the same Act, and so, in terms of our finding under issue 1, the Petitioner is now short by only one vote, and his candidature has been materially affected by the circulation or distribution of the objectionable poster Ex. 23 by Respd. No. 1, his claim to the seat in question shall upheld. We decide the issue accordingly.

#### ORDERED

Let the election of Respd. Shri Bhairon Lal (*alias* Kala Badal) to the seat of the Rajasthan Legislative Assembly from Khanpur Constituency in the year 1952, be declared to be void and the said Respd. be disqualified, because, he has been found guilty under Section 123(2) of the R.P. Act 1951 of having attempted to indirectly interfere with the free exercise of their votes by the voters in that constituency by making free use of condemnable posters like Ex. 23, and, let the Petitioner Shri Jhujhar Singh be declared duly elected to the aforesaid seat. The Petitioner shall also get Rs. 500 by way of costs from Respd. No. 1, Shri Bhairon Lal.

(Sd.) P. D. PANDE.

(Sd.) J. P. MATHUR.

(Sd.) BISHEN S. DARBARI.

KOTA;  
The 16th July, 1953.

[No. 19/273/52-Elec.III/12245.]

P. R. KRISHNAMURTHY, Asstt. Secy.

